

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of D.W., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CHRISSY TRUTSCH,

Respondent-Appellant,

and

RICHARD WHEELER,

Respondent.

In the Matter of D.W., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

RICHARD WHEELER,

Respondent-Appellant,

and

CHRISSY TRUTSCH,

Respondent.

Before: Murphy, P.J., and Cavanagh and Neff, JJ.

UNPUBLISHED
February 14, 2003

No. 242279
Kalamazoo Circuit Court
Family Division
LC No. 98-000201-NA

No. 242281
Kalamazoo Circuit Court
Family Division
LC No. 98-000201-NA

PER CURIAM.

In these consolidated appeals, respondents appeal as of right the trial court's order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (j) and (n). We affirm.

I

Respondents contend that the evidence was insufficient to support the jury's finding of a statutory basis for jurisdiction. We disagree. To properly exercise jurisdiction, the trial court must find that a statutory basis for jurisdiction exists. MCR 5.974(F)(3); *In re PAP*, 247 Mich App 148, 152-153; 640 NW2d 880 (2001). Here, the trial court instructed the jury in accordance with MCL 712A.2(b)(1) and (2), which provide that a court has jurisdiction over a child under the following circumstances:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being . . .

* * *

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

The evidence was sufficient to support a finding of jurisdiction under these provisions. Respondents' past failure to provide proper care for their children, their failure to participate in treatment plans and avail themselves of services, and their failure to obtain stable housing established by a preponderance of the evidence that they were likely to neglect DW as well. Additionally, Trutsch suffered from physical limitations that prevented her from caring for the child by herself. She relied on Wheeler, who placed the child at even greater risk because of his history of sexually abusing children and failure to benefit from treatment. Accordingly, the evidence established a statutory basis for jurisdiction.

II

Respondents also contend that the evidence was insufficient to establish the statutory grounds for terminating their parental rights. We disagree. In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. MCR 5.974(F)(3); *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). This Court reviews the trial court's findings of fact under the clearly erroneous standard. MCR 5.974(I); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Under this standard, the trial court's decision "must strike [the reviewing court] as more than just maybe or probably wrong." *Id.* at 356, quoting *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

A

Wheeler argues that evidence of his past sexual abuse was too remote in time to be relevant to his relationship with DW. He contends that the trial court therefore erred in terminating his parental rights under § 19b(3)(n). However, petitioner's experts testified that sexually abusive behavior is deeply ingrained, and that pedophiles persist in their abusive behavior unless they conscientiously and diligently undergo treatment. The evidence established that Wheeler was likely to persist in this behavior because he failed to benefit from three different programs, he did not appreciate the wrongfulness of his conduct, and he continued to deny or minimize his past sexual offenses. Additionally, one psychologist testified that Wheeler was especially prone to abuse young and vulnerable victims. DW would therefore be at risk of future abuse by Wheeler.

B

The trial court also did not err in finding that termination of respondents' parental rights was warranted under §§ 19b(3)(g) and (j). The evidence established that Wheeler has a propensity to abuse children, and that Trutsch fails to recognize the danger he poses to children. Additionally, Trutsch is unable to care for the children independently, and depends on Wheeler. She has failed to prevent Wheeler from having contact with her child, and she failed to prevent him from interfering with her prenatal care during an especially high-risk pregnancy. Both respondents have failed to avail themselves of services and comply with parent-agency agreements in the past. This evidence supports the trial court's determination that §§ 19b(3)(g) and (j) were each established by clear and convincing evidence.

III

Respondents also argue that termination was not in the child's best interests. Once a petitioner establishes by clear and convincing evidence that a statutory basis for termination exists, the court must order termination of parental rights unless it finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *Trejo, supra* at 353. This Court reviews the best interests decision for clear error. *Id.* at 356-357. Because the evidence failed to show that termination was not in the child's best interests, the trial court did not err in terminating respondents' parental rights.

Affirmed.

/s/ William B. Murphy
/s/ Mark J. Cavanagh
/s/ Janet T. Neff